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## HUMANS VERSUS WILDLIFE: THE ROLE OF THE STATE AND THE JUDICIARY IN PROTECTING WILDLIFE

*The greediness of the humans at the cost of the other living beings. Could they be given Legal personality to protect their lives*

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### Abstract:

In the recent past several bills meant for the protection of wild animals have been introduced in and rejected by the parliament. Once again The Prevention of Cruelty to Animals Act (Amendment) Bill, 2022 has been introduced in the parliament with the avowed objective of guaranteeing several freedoms and protection against abuse of animals. A sudden spike of cruelty to animals from 2014 to 2022 is shocking and uncontrollable abuses on animals made animals lovers and NGO's to raise their voice on behalf of animals for attributing legal personality. To protect them the new bill proposes far reaching reform to the 60 years old animal welfare laws. It is hoped that enhanced punishments would curtail animal abuse.

**Index Terms:** Wildlife Protection, Cruelty against Wild Animals, Legal Personality, Universal Declaration of Animal Rights, 1978, Freedoms to Animals.

### Introduction:

Wildlife is recognised as common property of the state. And it is the obligation of a state as trustee to protect them. As per the **Public Trust Doctrine** the State is the trustee of all Natural Resources have to protect its own resources. But from past one decade one could have noticed that an enhanced rate of animal abuses taken place in India. Number of cases filed in various apex courts in India during 2016 to 2022 for Protecting wildlife and to curtail Cruelty against Animals. The Animal Lovers and various Animal Protection Organisations making a hue crie regarding the exponential rise of conflicts between humans and wildlife. There are number of conflicting judgments from 2014 to 2022 which no judgment is alike in giving protection to animals.

Around 2,054 cases of illegal trafficking of and wild animal killing got registered in India in the past two years (2018-2020) <sup>i</sup>9,253 people have been arrested in wildlife poaching cases between 2012 and 2018.<sup>ii</sup> Among 141 cases of poaching, 84 seizures happened in between 2012 and 2018.<sup>iii</sup> Wildlife poaching and wildlife crimes were enhanced to 52% in between 2014-2016. Over 30,382 wildlife crimes happened in between 2014 to 2016<sup>iv</sup> several websites have been advertising sale of rare animals and their parts. A list of 106 websites were been recognised by the wildlife crime control bureau. Some of them are quikr.com, olx.in,

alibaba.com, shopping.rediff.com, petsmart.com and snapdeal.com.<sup>v</sup> The International legal trade had increased from 500% in value since 2005 to 2,000 percent.

On other hand, the estimated value of the global illegal trade in wildlife is worth around \$7-23 billion per year, equivalent to nearly 25% of the value of the legal market. <sup>vi</sup>TRAFFIC confirms that at least 23.5 tonnes of pangolins and their parts were trafficked in 2021 alone all eight species of pangolin are listed on the IUCN's red list of threatened species.<sup>vii</sup>The overall illegal trade on wildlife has been estimated to be worth up to USD 20 billion per year. <sup>viii</sup>

A number of cases were pending in various subordinate courts regarding animal abuses, negligence and cruelty against animals etc., noticing the huge pendency of cases on wildlife and animal abuses in various courts, Supreme Court issued directions to its subordinate courts to dispose the cases immediately. A contradicting judgment had been delivered by the Uttaranchal High Court in 2018 declaring "Entire Animal Kingdom" as legal entity, with rights, duties and liabilities alike a Living beings. Even Punjab and Haryana High Court too gave "personhood to entire animal kingdom including avian and aquatic as legal entities with all rights and duties of living persons".

In 2020 a Public Interest Litigation had filed in Supreme Court prayed to declare entire Animal Kingdom as legal entity and humans as loco parentis and to issue guidelines for animal protection.<sup>ix</sup> The intention of the petitioners is to protect these vulnerable animals and they sought that these minimal punishments and old law failed to give full protection as such they felt full protection could be possible only if they had be given the status of legal entity. Upon hearing the Supreme Court had issued notice to the centre and to other wildlife authorities for their opinion upon declaring entire animal kingdom as legal entities<sup>x</sup> but remained silent on attributing human status to animals on the ground that how could animals becomes equal to natural persons.

Whilst on contrary One court acquitted a man who had been accused for beating an Ox to death based upon the ground that only for intentional killing one can be convicted.

Karnataka High Court held Section 279 of Indian Penal Code, 1860 which pertains to Rash driving would not be attracted in cases of accident involving a pet dog/animals and concluded that Such accidents would also not attract liability under sections 134 and 187 of the Motor Vehicles Act, 1888 which pertain to duty of driver in case of accident and injury to a 'person' and punishment for offences relating to accident respectively. The bench refused to read the word 'person' used in these provisions to include animals and held that penal provisions must be understood in their literal sense otherwise, in the event of a death of a pet or animal, the offence under section 302 of IPC would also be attracted'. <sup>xi</sup>

But unfortunately the punishments or penal sanctions in various animal welfare laws are very minimal. There were Pleas in Supreme Court to enhance penalties under the Prevention of Cruelty to Animals Act, 1960.<sup>xii</sup> This is not only a burning issue limited to country like India, world widely animals are ill treating by humans. It is an Universal issue. Life in wildlife or other living beings are also have right to life with respect and dignity alike humans.

Another most shocking issue regarding animals is road accidents. In the United States alone every year 20 lakh fallow deers, die in accidents by humans rash and negligent driving. In 2019 in India 73 cheeta's died in road accidents and other 10 cheeta's had met with railway accidents. As per the reliable report most of them happened in Maharashtra alone.<sup>xiii</sup> Nasik Mahanagar Corporation's veterinary department had recorded 13,888 animals, including domestic and live stocks were injured by road accidents from 1st April, 2017 to 31<sup>st</sup> July, 2021 i.e. Nine stray animals injured in road accidents in Nagpur per day. 9,358 stray dogs were injured in road accidents, followed by 3,127 cattle, 1370 cats, 17 goats and 4 pigs 30% of them died on spot. <sup>xiv</sup>83 leopards were killed in 2019 due to road and train accidents. <sup>xv</sup> Twenty six tigers had died across the country between January 2010 and January 2021 by road accidents. Former principal chief conservator of forest force B K Singh said that widening of roads and doubling railway tracks in corridors, used by animals like tiger, leopard and black buck, which are listed under schedule 1 of the wildlife protection Act, must be avoided.<sup>xvi</sup> To curtail rash and negligent driving by humans in forest reserved areas supreme court held "Protection Of Environment Would've Precedence Over Economic Interest" and revoked its Approval For Doubling Castlerock to Kulem Railway Line in forest reserved area.<sup>xvii</sup>

## II. Incompatibility between Humans and Animals:

A pregnant wild elephant in Kerala state was brutally killed by humans. Within a short span of time a similar incident had taken place in pathanapuram forest range area under punalur division in Kollam district, where a young female elephant died of injuries in her mouth. A pineapple which was filled with potassium nitrate and offered it which had exploded in her mouth when she chomped it, blast took place in her mouth and her jaw had broken and became unable to eat for several days and became weak, and consequently died in waters of the Velliya River.<sup>xviii</sup>

The wild life officers said, “the accused has a habit of hunting wild boars in barbarous way and used to sell its meat. And they routinely applies this barbarous method to trap wild boars. By this statement whether the animal is wild boar, or a deer or an elephant they are all animals and all had a similar pain. The pain is similar to every creature in this world. There was a crystal clear evidence shows that there was a habit of killing wild boars in such a barbaric manner by humans from a number of years.”<sup>xix</sup>

Another most constant cruelty inflicted against animals by humans is in villages near reserved forests for protecting their crop from wild animals farmers use a variety of indigenous lethal and non lethal means to keep wild pigs away from their farms. The farmers whose lands are near to the reserved forests used to lose their crop by wild animals. To protect their crops with no other option they use lethal and non lethal methods against animals. These methods kill the wild animals in barbarous way. To balance the conflict between animals and humans there is an immediate need raised in India for formulating and implementing a balanced and pragmatic policy framework for mitigating human and animal conflicts.<sup>xx</sup>

The other kind of cruelty against elephants was exhibiting them in the processions in temple in hostile manner. years back, elephants were used for carrying, dragging and pulling heavy loads like timber in forest areas but due to advanced technologies modern tools, equipments, different transportation modes and their availability elephants were mostly relieved from traditional labour pain, now elephants were being utilised for processions or in exhibitions in the festivals of the temples/ mosques rallies for long standings in a hostile atmosphere where they lost their natural habitual residence. These captive elephants are subjected to fear and pain in the process of taming. In one of the judgments the court treated exhibiting captive elephants for a long time in hostile atmosphere amounts to cruelty to the elephants because they lost their natural living. Court issued a notice to the Kerala State Government that Kerala Captive Elephants Management and Maintenance Rules, 2003 were not sufficient to prevent cruelty to the captive elephants in the absence of penal provisions. And opined that “it is the time for the legislature to act for liberating this poor wild animal from the processions and exhibitions in connection with the festival of the temples/ mosques and allow them to live freely in jungles”.<sup>xxi</sup>

Another cruelty inflicted in the name of traditional festival fair on animals is Maramadi Competition or cattle race. Where a wooden piece was fixed at the bottom of a plough and is carried by a pair of bullocks in the paddy field and a man do surfing behind the tails of bullocks and used to whip them continuously to control them. This competition was against the Performing Animals Registration Rules, 2001 and it amounts to cruelty to animals. The cattle race shall not be permitted as it would amount to cruelty to animals.<sup>xxii</sup>

## III. Legal Personality :

“legal persons, being the arbitrary creations of the law”.<sup>xxiii</sup> “legal persons are all entities capable of being right and duty bearing units all entities recognised by the law as capable of being parties to legal relationship”.<sup>xxiv</sup> Famous jurist Salmond said so far as “legal theory is concerned, a person is any being whom the law regards as capable of rights and duties”<sup>xxv</sup> the concept of legal personality varies in many countries some countries attributed legal personality to corporations, institutions, fund or estate devoted to special uses, and to a trust estate. A person for the purpose of jurisprudence as any entity not necessarily a human being to which rights or duties may be attributed.<sup>xxvi</sup>

Foetus too a consumer (like other human beings) entitled to insurance claim. As per The American law under The Unborn Victims of Violence Act, 2004 recognised human foetus as a ‘person’ and considered an unborn child is a ‘consumer’ and hence entitled to insurance coverage like other human beings.<sup>xxvii</sup> These were some instances shows that legal personality is attributed to tangibles and non tangibles, movables and Immovable’s, corporal and non corporal, even a baby in the womb has legal personality but unfortunately our fellow beings were not attributed legal personality.

#### IV. Attributing legal status to animals will it stop cruelty towards Animals ?:

All these continuous abuses and high rise of cruelty against animals and various conflicting judgments led to thinking of attribution of personhood to animals. Two High Courts declared entire animal kingdom as legal entities. Whilst on the contrary this would leads to many other conflicts. Animals cannot be equal to humans. Animals are to be protected and respected.

Attributing personhood or legal status would be suitable for corporations and idols because they are created. But implicating personhood to animals who has life, similar pain, Intelligence, respect alike humans is quite a different issue. Animals will depend upon other animals for food, if attributed then no animal will be allowed to kill another living beings. It will be against their natural living. If still man wants to attribute the status of legal entity to animals then he would be start killing of animals for feeding among them. What will be a much difference then. Here abuses on animals, for man's greediness, should be curtailed at roots. For man's luxuries and his comforts, and his life styles (ornaments, ivory articles, consumables, medicinal purposes etc.), men directly depending upon animals. A paradoxical assertion existed that human species are the most wise and superior creatures on the earth when compared to other living beings and they dominate entire other species. They feel the earth is meant for humans alone. These thoughts became a nightmare to entire animal kingdom. Men day by day becomes beast. In between 2012 to 2015 24,000 cases had registered against cruelty to animals and 30,000 stray and stolen dogs are brutally killed for their meat in Northeastern states like Mizoram and Nagaland. But no movement has spurred for enhancement of stringent penal sanctions.<sup>xxviii</sup>

In 1982 the prevention of cruelty against animals Act, 1960 was amended for broadening the scope of the activities which constitute animal cruelty but didn't enhanced penalties. Later penalty imposed on the perpetrators for barbaric animal cruelty. In 2011 Animal Welfare Board of India introduced a bill so called Animal Welfare Act, 2011 for replacing the PCA Act, 1960 and to modify the existing approach of authorities in dealing with animal protection by a defensive position to a positive welfare and wellbeing oriented approach and by augmenting penalties for animal abuse, and to strengthen animal welfare organizations, and to alter and enlarge the definition of animal abuse but this bill didn't passed in parliament.

In 2014 animal welfare board of India again made an attempt to introduce a new bill i.e Animal Welfare Bill, 2014 which proposed to introduced furthermore higher penalties but this bill too lapsed in parliament. In 2016 a private member Bill was introduced in parliament for making all offences cognizable under section 11 of the PCA Act, 1960. In 2017 Maharashtra and Karnataka states inserted some sections in 1960 Act for imposing conditions on bullock cart race and to aggravate the penalty for any offense arising out of Jallikattu events alone. But here too no mention about enhancement of penalties. For amending the 60 years old Prevention of Cruelty to Animal Act, 1960 Government of India prepared a draft bill namely The Prevention of Cruelty to Animal Act, (Amendment) Bill, 2022.<sup>xxix</sup>

#### V. What's new in the Proposed Draft Bill ?

The Prevention of Cruelty to Animal (Amendment) Act, 2022 introduced under section 2(i) **Bestiality** (sexual activity or intercourse between human being and animal). Under section 2(k) **gruesome cruelty** (making an animal lifelong disability) is inserted. **jurisdictional veterinarian** is proposed to be inserted under section 2(l), for eradicating cruelty against animals .

The supreme court issued directions in Dr. Maya D. Chablani V Radha Mittal & Ors case that every state has to establish Animal Welfare Boards as such the present draft added a separate chapter VII for establishment of **State Animal Welfare Board** section 2(m) and from sections 42-49 deals with animal welfare boards with its objectives, constitution, powers and functions under it. The ministry of forests proposed to establishment a **Society for Prevention of Cruelty to Animal** as such it inserted a clause under section 2 i.e 2(n), previously strays were excluded from wildlife protection Act, 1972 due to exponential spike in abuses on stray animals present draft bill inserted a new clause (o) to section 2 namely **community animals**. poultry facilities were being provided to poultry u/s 2(p) which has been adopted from world organisation for Animal Health. u/s 2(q) Livestock farm is introduced for production of food for the mankind.

Another most notable provision is inserted under section 3A which provides **5 freedoms to Animals** and made an obligation on every breeder to ensure them, if they are strays i.e community animals Municipality or Panchayats should take responsibility for them. New draft bill proposed to Amend Section 11 with enhanced punishments and made substitutions shall not be less than ten rupees but which may extend to fifty rupees with **“shall not be less than one thousand rupees per animal but which extend to two thousand five hundred rupees per animal”** and inserted subsection 4 to section 11 making investigating officer to make a report of each case registered under the Act to the District Police Headquarters which shall be shared with The State Animal Welfare board and upon request of state board case details will be forward to Animal Welfare Board Of India. This new bill Inserted new subsections 11(A) **Gruesome Cruelty** and section 11(B) **Killing of an animal with intention to kill with punishments i.e.** any person who impose gruesome cruelty to animals shall be punishable with a minimum fine of seventy five thousand which may extend to one lakh rupees **per animal** or three times to the cost of the animal as determined by a judicial magistrate in consultation with the jurisdictional veterinarian, whichever is more or with imprisonment of three years which may extend up to five years or with both. The draft bill made 61 amendments to the existing Act, 1960. This draft bill yet to be introduced in the parliament. These 61 amendments are the outcomes of various verdicts of different courts in recent past.<sup>xxx</sup>

India stood in grading ‘C’ by the Animal Protection Index, 2020. Even cats, dogs are slaughtering in Mizoram and Nagaland states. Hundreds of street dogs were killed brutally for their meat. This will spread zoonotic diseases such as rabies, trichinosis, typhus and anthrax. Every year 30,000 stray dogs were brutally been beaten to death for their meat. In south India in some isolated regions cats were being killing for their meat.<sup>xxxii</sup>This bill have to be immediately passed by the parliament.

Beside the new bill, a Petition has been filed as pro bono public for enforcement of some old animal welfare laws in 2014. The petitioners brought notice through their prayer that The Provisions of Prevention of Cruelty to Animals Act, 1960 and the rules framed there under and The Provisions of Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009 had not been come into force heretofore.<sup>xxxiii</sup>Many International and National Welfare Laws were not been heretofore recognised or ratified by many United Nation Member States. Among them Universal Declaration of Animal rights to be adopted by India if it proposes to attribute legal personality to animals. Through the introduction of this New bill, 2022 **five Brambells freedoms** has expressly been inserted to 1960 Act.

## VII. Do Animals possess Rights and Freedoms:

Yes they possess rights. **Universal Declaration Of Animal Rights** proclaimed in Paris on 15<sup>th</sup> October, 1978 at the UNESCO Headquarters. The International League of Animal Rights 1989 submitted the text of UDAR to the UNESCO in 1990 and made available to the public in 1990 itself. But there is no much /importance has been given to Universal Declaration of Animal Rights, 1978 because they are common standards and has no binding nature. No awareness among people existence of UDAR,1978 .

*Its preamble says “all animals have rights it did not segregated wildlife and Domestic Animals. It said due to continues crimes by man against nature and against animals brought a necessity for enactment of UDHR 1978. Recognition by the human species of the right to existence of other animal species is the foundation of the co existence of species throughout the animal world. The continuous genocide by man on animals, and brought a necessity to respect animals, because it is linked with the respect of man for men. And it could be possible only from childhood man should be taught to observe, understand, respect and love animals”.*

Here are the 14 rights have been provided to Animals by UDAR, 1978.

**A comparison between UDHR, 1948 and UDAR, 1978**

<b>Universal Declaration of Human Rights (UDHR), 1948</b>	<b>Universal Declaration of Animal Rights (UDAR), 1978</b>
1.All Human Beings are born free and equal in dignity and rights	1.All animals are born with an equal claim on life and the same rights to existence.
2.Every one is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour , sex, language, religion, political or other opinion, national or social origin, property, birth or other status. 6.Everyone has the right to recognition everywhere as a person before the law	2(1).All animals are entitled to respect 2(2).Man as an animal species shall not arrogate to himself the right to exterminate or inhumanely exploit other animals. It is his duty to use his knowledge for the welfare of animals. 2(3). All animals have the right to the attention, care and protection of man.
5.No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment	3(1).No animal shall be ill treated or shall be subject to cruel acts. 3(2).If an animal has to be killed, this must be instantaneous and without distress.
3.Everyone has the right to life, liberty and the security of person. 15(1) Everyone has the right to a nationality. 15(2)No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.	4(1).All wild animals have the right to liberty in their natural environment, whether land, air or water, and should be allowed to procreate. 4(2).deprivation of freedom, even for educational purposes, is an infringement of this right.
12.No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.	5(1).Animals of species living traditionally in a human environment have the right to live and grow at the rhythm and under the conditions of life and freedom peculiar to their species. 5(2).Any interference by man with this rhythm or thee conditions for purposes of gain is an infringement of this right.
13(1).Everyone has the right to freedom of movement and residence within the borders of each state 13(2).Everyone has the right to leave any country, including his own, and to return to his country.	6(1).All companion animals have the right to complete their natural life span. 6(2).Abandonment of an animals is a cruel and degrading act.
24.Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.	7.All working animals are entitled to a reasonable limitation of the duration and intensity of their work, to the necessary nourishment, and to rest
	8(1).Animal experimentation involving physical or psychological suffering is incompatible with the rights of animals whether it be for scientific, medical, commercial, or any other form of research. 8(2).Replacement methods must be used and developed.
	9.Where animals are used in the food industry, they shall be reared, transported, lairaged and killed without the infliction of suffering.

4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.	10(1).No animal shall be exploited for the amusement of man 10(2).Exhibitions an spectacles involving animals are incompatible with their dignity.
	11.Any act involving the wanton killing of an animal is genocide, that is a crime against life.
	12(1).Any act involving mass killing of wild animals is genocide, that is a crime against the species. 12(2).pollution or destruction of the natural environment leads to genocide.
	13(1).Dead animals shall be treated with respect. 13(2).Scenes of violence involving animals shall be banned from cinema and television, except for humane education.
19.Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. 7.All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination. <sup>xxxiii</sup>	14(1).Representatives of movements that defend animal rights should have an effective voice at all levels of government. 14(2).The rights of animals, like human rights, should enjoy the protection of law. <sup>xxxiv</sup>

The Universal Declaration of Animal Rights, 1978 considered that all living beings possess natural rights. Any animal with a nervous system has specific rights and considered that the co existence species have to recognise other animal species right to live and making people to remember that the respect of animals is inseparable from the respect of men for each other.<sup>xxxv</sup>

Whereas under Chapter 7.12 of the guiding principles for animal welfare which were Internationally recognised, which are also known as Brambells, five freedoms. They are

1. Freedom from hunger, thirst and malnutrition.
2. Freedom from fear and distress.
3. Freedom from physical and thermal discomfort.
4. freedom from pain, injury and disease and
5. Freedom to express normal patterns of behaviour.<sup>xxxvi</sup>

These 5 Freedoms were been adopted by India in its Prevention of Cruelty Against Animals Act, 1960 in sections 3 and 11 as fundamental rights to animals impliedly. And Articles 51 A (g) and (h) of the Indian constitution is like a Magna Carta for Animals (A Bill of Animal Rights)<sup>xxxvii</sup>: imposed duty on Central Government, State Governments and Union Territories and its agencies to protect and safeguard animals. Protecting agencies such as Ministry of Environment, Forest and climate change (MoEF) and Animal Welfare Board of India (AWBI) are trustees to look after the welfare of animals.

Right to life is made applicable to persons alone. It is no where mentioned persons include animals in Indian constitution. The Indian constitution guaranteed right to life to animals through article 21 i.e life includes animal life also as applicability. But No fundamental rights were been attributed to animals. Whereas, through Article 48A constitution imposed a duty on state to safeguard forests and wild life as trustee because animals were treating as stocks, property, things, consumables, ivories, slaves, earning resources but not as other living beings who has life, blood, pain, sense, hunger, intellect, and has their own

living style. They were treated as a thing. Utilised for public use and for balancing biodiversity. Wildlife had been recognised as natural resources by public trust doctrine.<sup>xxxviii</sup> State of Alaska given wildlife the greatest trust protection for public use though not for preservation of the resource. They placed wildlife resources as analogous to a public trust.<sup>xxxix</sup> The Indian Constitution imposed duties on every citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to show ruth and be compassion towards them.

Universally Animals has been recognised as property that can be possessed by humans. on deletion of Article 19(1)(f) i.e., Right to property, from fundamental rights under part III of the Indian constitution, is no more a fundamental right in India liberalized humans to possess animals as source of income and made them slaves. impliedly provisions 3 and 11 of PCA Act, 1960 they acquired some basic rights in the form of legal rights. Section 3 read with sections 11(1)(a) and (o) and Articles 51A (g) and (h) of the constitution.<sup>xl</sup>

Though no International Agreement ensures protection of animal welfare, Universal Declaration Of Animal Welfare (UDAW) And World Society For The Protection Of Animals (WSPA'S) And Office International Des Epizooties (OIE'S) i.e World Organisation For Animal Health made efforts to provide animals rights and freedoms.<sup>xli</sup>

The first American law prohibiting cruelty to animals was passed by the puritans of the Massachusetts bay colony in 1641 : No man shall exercise any tyranny or cruelty towards any brute creatures which are usually kept for man's use. universally legal changes taking place to recognize animals as legal persons (Albert Schweitzer).<sup>xlii</sup>

The United Nations safeguarded only the rights of human beings, not the rights of other species like animals, ignoring the fact that many of them, including bulls, are sacrificing their lives to alleviate human suffering, combating diseases and as food for human consumption.<sup>xliii</sup> In 2016 Supreme Court held bulls cannot be used as performing animals for jallikattu and bullock cart race, since they are basically draught and pack animals, not anatomically designed for such performances but custom prevailed over law the custom of jallikattu still going on in India in spite of its prohibition by the Supreme Court of India.

### VIII. Prominence Of Animals In Indian Mythology:

As early as 1500 - 600 BC in Isha Upanishads, it is professed as follows: "the universe along with its creatures belongs to the land. **No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species**".<sup>xliv</sup> The Yajur Veda says that service to animals leads to heaven no person should kill animals helpful to all and persons serving them should obtain heaven.

According to Atharva Veda the earth was created for the enjoyment of not only human beings but also for bipeds and quadrupeds, birds, animals and all other creatures.<sup>xlv</sup>

The emergence of all life forms from the supreme being is expressed in the Mundakopnishad from him too gods are produced manifold, the celestials, men, cattle, birds. The Manusmriti says he who injures innocent beings with a desire to give himself pleasure never finds happiness, neither in life nor in death. The Shrimad Bhagavatam says that a cruel person who kills others for his existence deserves to be killed, and cannot be happy, either in life or in death.

According to the Yajunavalkya Smriti the wicked person who kills animals which are protected has to live in hellfire for the days equal to the number of hairs on the body of that animal.<sup>xlvi</sup>

### IX. The Origin of recognising Cruelty against Animals in India:

For the First time in 1760 the Britishers built slaughterhouse in India and by 1910, its size was enhanced to 350 slaughterhouses. In 1857, they forced Hindus and Muslims to lick cartridges spread with pig and cow fat. And they promoted beef eating among Muslims and encouraged people to hunt predators, they disliked native stray dogs because they compete with the British dogs and used to kill them en masse. The British raj passed its first animal rights legislation in 1860. The author said 1860 legislation banned certain kinds of cruelty to animals, but left abused animals. In 1861 the first society for the prevention of cruelty to animals was founded. In 1962 the Indian parliament passed its first animal rights legislation.



Later through directive principles of state policy and through fundamental duties the Indian government given imposed duties on both state and its citizens to protect the environment and wild animals.<sup>xlvii</sup>

## X. Initiatives made by Indian government to minimise abuses on animals

India is the first South Asian country to ban the use of cosmetic products on animals in 2013 and subsequently banned the import of cosmetic products on animals in 2013 and subsequently banned the import of cosmetic products tested on animals in 2014.<sup>xlviii</sup>

## XI. Some International perspectives which provided protection to animals and their welfare if they are economically beneficial to human beings:

The United Nations safeguarded only the rights of human beings, not the rights of other species like animals, ignoring the fact that many of them, including bulls, are sacrificing their lives to alleviate human suffering, combating diseases and as food for human consumption.<sup>xlix</sup>

**Declaration Of The Protection Of Birds useful to agriculture 1875 convention** designed to ensure the protection of various species of wild animals which are useful to man or **inoffensive 1900, convention for the regulation of whaling 1931**.<sup>1</sup> The Act of 1849 was accordingly amended by the wild animals in Captivity Act of 1900, which made it an offence to maltreat a wild animal while actually in a state of captivity are international conventions which looks after protection of certain species which are useful for economic purposes. Other than for economic gain international conventions too did not gave importance to its fellow beings.

Germany Amendment Act 2002 added “and the animals” into its constitution which obligates “State” to respect “animal dignity”. German Animal Welfare Law, Article 3 prohibits animal performances, operations or treatments, training or sports competitions which may result in the severe pain, suffering and harm and which could impair the performance of the animals as performance of the animals. Countries like Switzerland, Austria, Slovenia have enacted legislations to include animal welfare in their national Constitutions so as to balance the animal owners' fundamental rights to property and the animals' interest in freedom from unnecessary suffering or pain, damage and fear.<sup>li</sup> UK recognised “man’s responsibility towards his fellow creatures” and the subject federal act aims at “the protection of life and well being of the animals”.<sup>lii</sup>

“Animals have and intrinsic value which is irrespective of the usable value they may have for man. Animals shall be treated well and be protected from the danger of unnecessary stress and strain.” “prohibits training an animal to fight with people”.<sup>liii</sup>

## XII. Latest cases filed in various courts for protection of wildlife:

Here are the notable cases filed in Supreme Court and in various High Courts from 2020 to 2022 which are conflicting each other :

Calcutta High Court directed all subordinate courts to proceed with animal and forest cases on war footing. And remarked that there are 1140 cases pending under the forest laws before the courts below. and also quoted that “since the victims in all those cases are not state as is understood in the constitution and the laws but primarily the animals who are voice-less creatures who cannot be represented before any adjudicating authority except by the duly adjudicating authority except by the duly authorised representative of the state government”<sup>liv</sup>

“**It is for executive to enforce**” Supreme Court closes plea against cow slaughter, elephant poaching animal killing for crop protection religious sacrifices.<sup>lv</sup> Whereas universal declaration of animal rights, 1978 through 14(2) made a duty on judiciary to protect the animals. The rights of animals, like human rights, should enjoy the protection of law.

Rajasthan High Court Refused to give directions in the Plea seeking for **protection and maintenance of wildlife to control man animal conflict** in Kumbhalgarh and Todgarh wildlife sanctuaries.<sup>lvi</sup>

Madras High court held practicing mistreatment of temple elephants should be admonished and issued directions.

Calcutta HC took suo motu cognizance of **unnatural deaths of elephants, bisons etc., 60% of the deaths of elephants is apparently attributable to electrocution. and called chief wildlife warden West Bengal to place a short report on the situation as well as other areas which according to him are critically important and facing serious challenges in wildlife management.**<sup>lvii</sup>

1356 elephants have died in Odisha State alone since 2000 by lethal and non lethal means. 20 elephants were died in 2000-2001. the death rate of elephants in 2018-2019 86 elephants died and 2010-2011 83 jumbos dies and whereas 82 died in the year 2012-2013 this number increased to 77 in 2020-2021 and in 2022 by October 42 elephants died. 136 pachyderms were killed by poachers, 19 died due to poisoning and 33 elephants were hit by trains, 6 died in road mishaps and 204 died in other accidents and mostly 206 jumbos died due to electrocution, 106 were killed and 34 elephants died of natural causes 176 deaths are suspicious 51 died due to anthrax and 7 died by herpes and 334 by other disease. These all deaths took place in Odisha alone.<sup>lviii</sup> Orissa HC directed Chief Forests Conservator to submit a comprehensive reaction plan to **control unnatural elephant deaths.**

Bombay High Court issued suo moto analyze rights of wild animals in human dominated society, and took cognizance of Gadchiroli elephants shifting to zoo. The court opined that animals and the wild animals not being bestowed with similar mental faculties including faculty of speech as human being, it is difficult for human society to seek consent of the affected animals before they are forcibly removed from one area to another area but, that should not deter a human being from devising some method where rights of the wild animals against their forcible removal and in respect of other matters are equally respected as that of man and a balance is struck between the rights of man and rights of animals including wild animals. If this could be done, much of the problems arising from man animal conflict will be redressed. The court referred that **ancient Hindu texts have already recognized the rights of animals, birds and every living creature and regarded every living being as having emerged from same divine power as man thereby deserving due respect, love and affection.** Any move to shift them to a zoo would result in harming the biodiversity, and would be against the spirit of the biological diversity act, 2002.<sup>lix</sup>

Delhi High Court directed Animal Welfare Board of India to undertake a survey and to give a reporting status **of animals held by circuses** without renewed registration. And also allowed PETA and FIAPO to Participate in the survey conducting by animal welfare board **to identify conditions of animals in circuses.**<sup>lx</sup>

Tripura High Court Directed **closure of shops in Tripura state selling wild animals, birds notified under wild life protection Act.**<sup>lxi</sup>

Death of 800 olive Ridley sea turtles were died in Gahirmatha marine sanctuary, the world's largest rookery of the sea turtles. Many of the dead turtles bore injuries and were founded trapped in a trawl or gill nets. They are dying after getting strucked in fishing nets. Orissa High Court constituted a panel to study the cause of deaths, and asked to give suggestions for their protection. It banned fishing activities upto 20 kilometers off the shore.<sup>lxii</sup>

On 18<sup>th</sup> July, 2020 Telangana High Court directed the Telangana State to make all possible endeavours to ensure that no camel is slaughtered in the State of Telangana and the State Government is directed to send the rescued camels, back to the Rajasthan State Government in accordance with law and directed to take action against those persons violating the laws as well as to prevent the illegal killing of camels.<sup>lxiii</sup>

Bombay High Court had took suo motu cognizance upon a News Report published by the lokmat news network in "Hello Aurangabad" of it's "Dainik Lokmat" Aurangabad edition dated 15-04-2020 regarding **death of a leopard due to alleged negligence of forest officials.** In order to rehabilitate the leopard in natural surroundings, the employees of the forest department carried leopard to forest area a day before releasing him in natural surroundings, in order to immobilize it forest officials had stepped on the neck of the leopard which caused asphyxiation and lead to its death.<sup>lxiv</sup>

Bulls cannot be used as performing animals for Jallikattu and bullock cart race, since they are basically draught and pack animals, not anatomically designed for such performances.<sup>lxv</sup>

In Dr. Maya D. Chablani V Radha Mittal & Ors Court directed Animal Welfare Board Of India to circulate certain Guidelines to various Resident Welfare Associations, Police Department and to Municipal Authorities etc for protecting of stray dogs.

- Animals have a right under law to be treated with compassion, respect and dignity. Animals are sentient creatures with an intrinsic value. Therefore, protection of such beings is the moral responsibility of each and every citizen including the governmental and non-governmental organisations.
- People have to show compassion towards all living creatures. Animals may be mute but people as a society have to speak on their behalf. No pain or agony should be caused to the animals. Cruelty to animals causes psychological pain to them. Animals breathe like us and have emotions. The animals require food, water, shelter, normal behaviour, medical care, self-determination.
- Community dogs (stray/street dogs) have the right to food and citizens have the right to feed community dogs but in exercising this right, care and caution should be taken to ensure that it does not impinge upon the rights of others or cause any harm, hindrance, harassment and nuisance to other individuals or members of the society.
- All Law enforcement authorities shall ensure that no harassment or hindrance is caused to the person feeding street dog at the designated feeding spot and to properly implement the AWBI Revised Guidelines on Pet dogs and street dogs dated 26th February, 2015.
- It shall be the duty and obligation of every Resident Welfare Associations or Municipal Corporation (in case RWA is not available) to ensure that every community dog in every area has access to food and water in the absence of caregivers or community dog feeders in the said area.
- It shall be the duty and responsibility of the RWA or Municipal Corporation and all Government authorities including enforcement authorities like Police to provide all assistance and ensure that no hindrance is caused to the caregivers or feeders of community dogs. It shall be the duty and responsibility of the jurisdictional SHO to ensure that peace and harmony is maintained amongst the residents, care-givers and community dog feeders and there is no harassment to any care-giver or community dog feeder from feeding community dogs in the manner specified.
- It is the duty and obligation of every Resident Welfare Association or Municipal Corporation (in case RWA is not available), to ensure that every community dog in every area has access to food and water in the absence of caregivers or community dog feeders in the said area. There is a need to spread awareness that even animals have a right to live with respect and dignity. AWBI shall carry out an awareness campaign in association with various Newspapers, Television, Radio Channels and Social Media platforms. AWBI shall also ensure these Guidelines are disseminated through the abovementioned media.<sup>lxvi</sup>

### XIII. Conclusion:

Indian mythology saying animals are to be respected and to be shown humanity. But unfortunately the animals were brutally killing, sexually assaulting, their flesh were consuming and trading. Some for greediness, some for hunting, and some for gaming, entertainment, transportation etc etc., by several methods they abused and killed by humans. From 2014 to 2022 there was an enhanced rise of cases being filed in various courts in India. When we observe most of the cases are animal met with accidents caused by humans, pouching, inflicting gruesome cruelty towards them, slaughtering, religious sacrifices, gaming, races, processions and used for transportation, trafficking, exhibitions and entertainment, selling exotic wildlife in online openly. Man forget that the other living beings are also having life, respect, dignity and similar pain and intellect. No creature is superior to other. Animals were treating as objects by men but not accepting the fact that other living beings alike them have life. Shame upon some humans not even leaving the animals. Bestiality - sexual intercourse with animals by humans were enhancing day by day. No animal behaves such except a human beast.

Though National and International perspectives provided protection to animals from cruelty however, they were not given rights, given 5 freedoms universally but left it to the individual states. As they cannot be equated with humans they were been treating as source of income. For stopping the abuses upon them many countries slowly coming forward to provide legal personality to animals. As from the above discussion it is clear that though they were not having fundamental rights but through sections 3 and 11 of

Prevention of Cruelty Against Animals, 1960 Act provided them some rights and made an duty on both state and judiciary in protecting them from human's cruel activities. People were to act as loco parentie to protect them not to kill for their greediness.

The state as trustee had a duty to provide protection to them and in the same way legislations have to enhance the punishments as such this brings the fear in minds of people not to abuse or show cruelty against the innocent animals. The Animal Welfare Acts which were enacted earlier were still now didn't had force. New policies upon welfare of animals have be to brought for reducing conflicts between animals and humans. The decisions of government regarding Widening of highways in reserved forests have to be taken back. Let animals be left freely in their natural habitual residences. For enjoyment of men animals should not be tamed. With modern technology everything can be done by machines why still animals to be suffered. Humanity was day by day vanishing in humans. Bestiality cases were enhancing. 82 cases were reported in between 2010 and 2020 out of 5,00,000 animal related crimes in India.<sup>lxvii</sup>

World widely animals were brutally killing, consuming their flesh, sexually assaulting by humans as such there is an immediate need to enhance the penalties and penal sanctions in prevention of cruelty against animals Act, 1960 and in other animal welfare laws. 60 years were completed still according to the present needs and developments the existing Act have to be replaced with new Act providing the status of legal entity. Though enhancing penalties for cruelty against per animal may not reduce the abuses on them. One of the court acquitted a man upon the ground that Section 279 of IPC will not be made applicable to animals because it lack intention. The new draft Amendment bill 2022 made liable for intentional killing, but for most heinous crime on them has no death penalty. Three years imprisonment is highest. Will not bring much reform. Except attributing them legal entity status.

Globally, attributing personhood to animals were coming into picture. This is what the situations humans brought to themselves. An animals cannot be equated with humans. but humans becoming less than animals. Animals kill other living beings, plants, eats dead animals, live in mud water and fly in air (their natural way of living) whereas on other side humans kills animals for consumption ,testing them for medicinal purposes, kill for doing trade (beside their natural way of living). Animals only kill other fellow beings for meeting hunger but humans without depending upon them unable to live on earth.

Attributing personhood to animals like corporations, idols are quite different. corporations and idols are intangible created by men. They cannot even have mouth, face, sense, and pain. Whereas animals are tangible like humans they have their own style of living, habits, pain, principles, kingdoms etc.,. Until now they were being treating as slaves, or relying upon them for economic purposes. But giving personhood or rights will become undigestible to humans. Attributing duties to animals is vague. What duties animals have towards society ? if you teach them duties it is against their rights which leads to taming again making them suffer. Here animals have to be liberated, should not be ill treated. The ecology has its own food chain. Let it be move freely. For man's greediness animals should not be abused.

For protecting crop farmers used to kill animals through electrocution, or by other lethal or non lethal methods should be prohibited. If forests were not cleared then the wild animals will not come into villages for search of food.

slaughtering in name of religions, long standings, making them to carry heavy loads more than they can bare, stray dogs consumption, sexual intercourses. All these are abuses, cruelty towards them. All animal abuses have to be prohibited at roots.

Needs much more stringent laws with enhanced penalties.

Attributing personhood is welcoming in many countries. because humanity was vanishing. Vice creatures created by god Becoming less than animals. Eucador was the first state attributed legal rights to animals.

The present draft bill on The Prevention of Cruelty Against Animals Amendment Act, 2022 have to be passed by the Parliament.

Beside enhancing penalties there is a need to enhance penal sanctions. The present bill, 2022 enhanced penalties but punishments were limited only to 3 to 5 years. Though human psychology towards animals couldn't get changed by enhancing penalties, because from Immemorial times animals were being treated as

objects, with no other option left for protecting them either stringent sanctions to be imposed or attributing legal status to them.

When men not leaving animals for satisfying his lust how could a women be left by such persons who had been left freely in society. For bestiality rigorous punishment to be imposed and for second and subsequent offence death penalty.

Though they were not legally binding instruments (UDAR,1978) but as common standards which are applicable to every member states. Animals had right to life with respect and dignity. Though they had limited freedoms, recognised and protected before law. But steill there is no awareness among people regarding their rights. because many states didn't adopted them in their constitutions or in there statutory laws. Ecador is the first state which attributed legal status to animals. If not reforms to be taken place to existing animal welfare laws attribution of legal status will be left only option to the government for protecting them.

The PCA Act, 1960 didn't said clearly about which animals will come under strays. Previously strays were excluded from protection but the draft bill on Wildlife Animal Protection, 2022 included strays with a view to extend protection to strays under wildlife protection Act.

From past 60 years the existing Act is silent with no reforms. Meanwhile different kinds of abuses on animals were enhanced. new forms of abuses were not included in the Prevention of Cruelty to Animals Act, 1960. There is an immediate need for adding new provisions for protecting them and strays to be included in the Act.

There were many conflicting judgments regarding providing protection to animals. Whether domestic animals, live stocks or wild animals a need arisen for an immediate reforms in various animal welfare laws.

New provisions to be inserted in Indian Penal Code, providing punishments to those who acted cruelly against animals, and to Motor Vehicle Act, and who by rash and negligent driving caused animal death to be punished.

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